IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1 FAO No.1158 OF 1988

Date of Decision: 12-7-2006

1.Jaspal Singh, son of Shri Baga Singh
2.Richhpal Kaur, daughter of Shri Baga Singh(Minor)
3.Jasbir Singh, son of Shri Baga Singh(minor). The claimants No.2 and 3 through their brother being the guardian and next friend of the minors Shri Jaspal Singh, all residents of 53 Kachhwa Road, Ram Nagar, Karnal.

.....Appellants

VERSUS

1.Chander Bhan, son of Shri Gopi Chand Jhinwar, r/o Village Takhana Police Station Butana, District Karnal.(the driver of the offending truck bearing No.HRD 9474 as and on 20.1.1987)
2.M/s Aggarwal Roller Flour Mills, Kaither Road, Karnal through one of its Partner Shri Radhey Sham Gupta (The owner of the offending truck bearing No.HRD-9474 as and on 20.1.1987)
3.The New India Assurance Company Limited, Grand House, G.T.Road, Karnal.

.....Respondents

2 FAO No.1097 OF 1988

1.Pritam Singh son of Shri Rajwant Singh resident of House No.283, Ram Nagar, Karnal.
2.Sukhwinder Singh son of Shri Pritam Singh minor son of the deceased Smt.Balbir Kaur through his father Shri Pritam Singh being the next friend of the minor resident of House No.283, Ram Nagar, Karnal.

...Appellants

1.Chander Bhan son of Shri Gopi Chand Caste Jhinwar resident of village Takhana, Police Station Butana, Tehsil and District Karnal (The Driver of offending truck bearing No.HRD-9474 as and on 20-1-1987)
2.M/s Aggarwal Roller Flour Mills, Kaithal Raod, Karnal through one of its partner Shri Radhey Sham Gupta (The owner of the offending truck bearning No.HRD-9474 as and on 20-1-1987)
3.The New India Assurance Company, GT Road, Grand House G.T.Road, Karnal.

...Respondents

CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Namit Gautam,Advocate
for the appellants.

Mr.SS Aulakh,Advocate
for Insurance Company.

JUDGMENT

I propose to dispose of FAOs No.1158 and 1097 of 1988, which have arisen out of the common award dated 6-9-1988 rendered by the Motor Accident Claims Tribunal, Karnal wherein both the petitions were accepted. In the claim petition No.60 of 1987 of Jaspal Singh, the claimants were awarded compensation of Rs.20,000/- along with interest @ 12% per annum from the date of the application till its realization and in claim petition No.64 of 1987 of Pritam Singh and Sukhwinder Singh, the claimants were awarded compensation of Rs.32,000/- along with interest @ 12% per annum from the date of filing the application till its realization.

Brief facts common in both the claim petitions are that on 20-1-1987 at about 9.00 P.M. Pritam Singh son of Rajwant Singh was driving motorcycle No.HYC 4377 and Smt.Balbir Kaur and Harbans daughter and mother respectively, were sitting on the pillion seat of the motorcycle. While they have reached near the railway crossing and was going towards the side of Karnal on the left side of the road at a moderate speed and has reached near the Canal Rest House, the offending truck No.HRD 9474 came from behind driven by respondent No.1 rashly and negligently dashed firstly against a rickshaw and thereafter hit the motorcycle No.HYC 4377 from behind. Due to the impact of accident,

Harbans Kaur and Balbir Kaur fell on the road and they were crushed under the wheels of the truck and died at the spot. Respondent No.1-driver of the truck after causing the accident, managed to escape from the spot. This accident was witnesses by Kimti Lal. Pritam Singh had become unconscious at the spot. Report of the accident was lodged by Kimti Lal with ASI Ranbir Singh, who sent the same to the police station where FIR was lodged against the driver of the truck and a case under Sections 279,304A IPC was registered.

It is further the case of the petitioner that Harbans Kaur deceased was aged 54 years at the time of death and was earning Rs.600/- per month. Thus, the claimant claimed compensation of Rs.1,50,000/-. In Pritam Singh's case, a sum of Rs.1,50,000/- was sought as compensation with respect to the death of Balbir Kaur in the aforesaid accident. It was pleaded therein that she had obtained diploma in Tailoring and Embroidery and she was earning Rs.1200/- per month.

Upon notice, the respondents appeared and filed the sets of written statement. In written statement filed on behalf of respondents No.1and 2, it was denied that truck No.HRD 9474 was involved in the accident. It was pleaded that the accident was caused by some other vehicle and the driver of the motorcycle or its other riders had no occasion to see whether the vehicle which caused the accident had a number plate, if so what was it number and they have been falsely implicated in this case.

The New India Assurance Company by refuting the averments of the claimants in both the cases took up the stand that has been taken by respondents No.1 and 2 in the written statement.

On the pleadings of the parties, the parties framed the

following issues:

> "1.Whether the accident in which Harbans Kaur/Balbir Kaur lost her life was caused by the rash and negligent driving of truck bearing registration No.HRD-9474 by Chander Bhan, respondent No.1 as alleged?OPP
>
> 2.Whether it was Jaspal Singh brother of Balbir Kaur (deceased) who was actually driving the motorcycle of Pritam Singh without a driving licence as alleged and if so to what effect?OPP
>
> 3.Subject to the result of issues No.1 and 2 to what amount, if any, the claimants are entitled to compensation and if so, from whom?OPR
>
> 4.Whether the respondent No.1 was possessed of a valid driving licence at the time of accident?OPR1
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> 5.Whether the offending vehicle was being run on road against regular route permit?OPR1
>
> 6.If issue No.1 is not affirmed whether the respondent No.3 is liable to pay any compensation?OPR3
>
> 7.Whether the claim petition does not disclose cause of action as against respondent No.3? OPR3
>
> 8.Whether the petition is bad for non-joinder/ mis-joinder of necessary parties? OPR3
>
> 9.Relief."

After considering their evidence and hearing the learned counsel for the parties, the learned Tribunal returned the findings on issue No.1,2 and 5 in favour of the claimants holding respondent No.1 driver of truck No.HRU 9474 responsible for causing the accident due to rash and negligent driving in which Harbans Kaur and Balbir Kaur crushed under the truck and died at the spot.

The findings on issue No.1 was not challenged before me, therefore, the findings on issue No.1 is hereby affirmed.

In claim petitions No.60 and 64, while disposing of issue No.3 in both the cases mentioned above, the Tribunal noticed that Harbans Kaur has suffered death at the age of 53 and she had left behind Amrik Singh, Puran Singh and Gurmit Singh sons, Balbir Kaur and Gurmit Kaur daughters. All of them were married and Gurmit Singh had also died. Therefore, Jaspal Singh, Richhpal Kaur and Jasbir Singh are the claimants in that case. Richhpal Kaur at the time of filing of the petition was 14 years old while Jasbir Singh was 12 years old. It was pleaded therein that Harbans Kaur was in the service of the family i.e. in the shape of looking after the children and the assessment of the service rendered by the deceased was assessed as Rs.2000/- per annum by adopting a multiplier of 10. The Tribunal awarded a compensation of Rs.20,000/- to Richhpal Kaur and Jasbir Singh, now the appellants before this Court.

Learned counsel for the appellants contended that the dependency of the claimants and the service rendered by her to them has been adjudged on the lower side. Therefore, the claimants are entitled to the enhanced compensation. No evidence has been led by the claimants before the Tribunal to prove that she was rendering service to the minor claimants beyond Rs.2000/-.

However, in the claim petition No.64 of 1997, Pritam Singh-claimant stated that his wife was doing the job of embroidery and tailoring at her house. She kept two sewing machines at her house. He stated that the learned Tribunal has not taken into consideration this aspect of the matter that she was doing the job of tailoring and was earning Rs.1200/- per month. He further stated that if this aspect is taken into consideration, the compensation amount requires to be enhanced.

Therefore, I see no reason to disagree with the observations made by the Tribunal and find no merit in the contention of the learned counsel for the appellants because no cogent and convincing evidence has been led by the appellant to prove that the deceased was doing the job of tailoring. Neither any student nor any customer has been examined to prove the factum of tailoring business being carried by the deceased. The photocopy of the certificate placed on record has not been proved. Thus, in the absence of any cogent and convincing evidence, it cannot be said that the Tribunal was hard in granting the adequate compensation to the claimants.

After going through the reasoning adopted by the Tribunal on this issue, I feel that the amount of compensation adjudged by the Tribunal is just and fair and does not call for any interference in the appeal.

Resultantly, the claimants-appellants have failed to make out a case for enhancement of the compensation.

For the reasons mentioned above, both the appeals fail and the same are hereby dismissed leaving the parties to bear their own costs.

(R S MADAN)
JUDGE

July 12, 2006
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